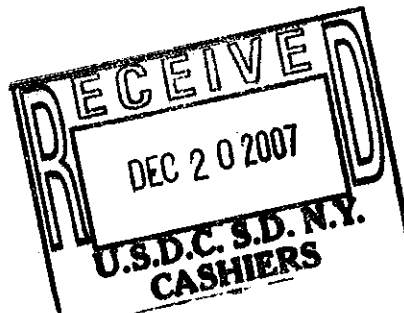


SCHLACTER & ASSOCIATES
Attorneys for Plaintiff
450 Seventh Avenue
New York, New York 10123
(212) 695-2000
By: JED R. SCHLACTER (JRS-4874)



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X	
CAMERON INDUSTRIES, INC.,	: 07 Civ. 7133 (LAK)
Plaintiff,	:
-against-	: FIRST AMENDED
	: <u>COMPLAINT</u>
T JUNIORS INC. and	:
DESIGN COLLECTION, INC.,	:
Defendants.	
-----X	

Plaintiff, by its attorneys, SCHLACTER & ASSOCIATES, for its complaint against defendants, alleges:

JURISDICTION

1. This action, as more fully stated below, is for, inter alia, copyright infringement, unfair trade practices and unfair competition; arises under Title 17 of the United States Code;

jurisdiction is vested in this Court under 28 U.S.C. Sections 1338(a) and 1338(b); and proper venue exists under 28 U.S.C. Sections 1400(a) and 1391.

THE PARTIES

2. Plaintiff, CAMERON INDUSTRIES, INC. (hereinafter referred to as "Cameron") is a domestic corporation duly organized and existing under the laws of the State of New York, with an office located at 1375 Broadway, New York, NY 10018. Plaintiff is a textile converter, selling finished textile piece goods to, among others, garment manufacturers.

3. Upon information and belief, defendant, T JUNIORS INC. (hereinafter referred to as "Juniors") is a domestic corporation, with a place of business at 1400 Broadway, New York, NY 10018, which purportedly manufactures, distributes and sells, among other items, ladies' wearing apparel to retail stores.

4. Upon information and belief, defendant DESIGN COLLECTION, INC. (hereinafter referred to as "Design"), is a foreign corporation, with offices at 2209 South Santa Fe Avenue, Los Angeles, CA 90058 and 470 Seventh Avenue, New York, NY; does business in New York; and is a textile converter who sold the allegedly infringing fabric to Juniors.

PLAINTIFF'S COPYRIGHTED WORK

5. In 2006 an original work of art was created by Avantgard SRL ("Avantgard"), and identified as "8508-G".

6. On or about February 21, 2006, Avantgard transferred and assigned, for valuable consideration, any and all of Avantgard's worldwide rights, title and interest in the design called 8508-G, to the plaintiff herein, including but not limited to the copyright thereto and any and all causes of action for prior, present and/or future infringements of such copyright. Thereafter, plaintiff created a fabric design repeat utilizing the design 8508-G, and identified this new design as "Pattern No. 23539".

7. Since on or about June 28, 2006, plaintiff's Pattern No. 23539 was produced on fabrics, which fabrics are also identified as Pattern No. 23539.

8. The design of Pattern No. 23539 is wholly original and is copyrightable subject matter under the laws of the United States.

9. In or about June 28, 2006, plaintiff began selling fabrics bearing the design known as Pattern No. 23539.

10. All of the provisions of Title 17 of the United States Code, and all of the laws governing Copyright, have been duly complied with; and a Certificate of Registration has been duly received from the Register of Copyrights, covering the design known as Pattern No. 23539, identified as follows: Registration No. VA 1-404-041.

11. Plaintiff is the sole proprietor of all rights, title and interest in and to the Copyright of said design.

12. A photocopy of plaintiff's Certificate of Registration for said copyrighted design is annexed hereto as Exhibit "A".

13. Subsequent to the publication by plaintiff of its Pattern No. 23539 involved herein, defendants, with full knowledge of the rights of plaintiff therein, infringed plaintiff's Copyright on such design by reproducing, displaying, manufacturing, printing, reprinting, yarn-dyeing, publishing, vending, distributing, selling, promoting and/or advertising fabrics and garments bearing a design thereon which contained substantial material copied from said copyrighted fabric design or by

causing and/or participating in such reproduction by reproducing, displaying, manufacturing, printing, reprinting, yarn-dyeing, publishing, vending, distributing, selling, promoting and/or advertising, all in violation of the rights of plaintiff under Section 106 of the Copyright Law, Title 17 U.S.C.

14. A photocopy of plaintiff's copyrighted design known as Pattern No. 23539 is annexed hereto as Exhibit "B". A photocopy of defendants' said infringement is annexed hereto as Exhibit "C".

15. All of defendants' acts, as set forth herein, were performed without the permission, license or consent of plaintiff.

16. Plaintiff has gone to great expense in producing and promoting the sale of fabrics bearing its copyrighted design Pattern No. 23539.

17. Plaintiff's copyrighted design incorporated carefully prepared and fashionable color combinations, which color combinations aided greatly in the sale of garments bearing the copyrighted design.

18. As a result of plaintiff's expenditure of money and skill in the promotion for sale of fabrics bearing plaintiff's copyrighted design, the fabric design and garments have acquired a substantial market value in the trade.

19. Defendants have a design obviously copied from plaintiff's copyrighted design, which copy defendants have been offering and continue to offer for sale. The design printed on defendants' fabrics and garments is substantially similar to plaintiff's copyrighted design.

20. Defendants' infringing design (Exhibit "C") is unmistakably copied from plaintiff's design (Exhibit "B").

21. Defendants' fabrics and garments, when viewed by a consumer, would appear to be substantially similar to the plaintiff's copyrighted design and a garment of like style bearing plaintiff's copyrighted design.

22. Upon information and belief, defendants have produced their fabrics and garments incorporating the copied design in a color combination virtually identical to a color combination of plaintiff's design.

23. Defendants, by their acts as aforesaid, have taken advantage of the knowledge and skill of plaintiff and of the good will developed by plaintiff and have capitalized upon the market created for plaintiff's design.

24. By defendants' use of a design and color combination virtually identical with plaintiff's design and color combination, defendants have been and will continue to be able to pass off and sell their fabrics and garments as a substitute for the fabrics sold by plaintiff and the garments sold by customers of plaintiff.

25. The aforesaid acts of defendants in copying plaintiff's design and color combination and selling copies of same constitutes inequitable conduct, unfair trade practices and unfair competition in that defendants have thereby misappropriated plaintiff's good will and the benefits of plaintiff's knowledge, skill and expenditures in the promotion of the distinctive design and color combination, and by reason of the sale of defendants' fabrics and garments in competition with the plaintiff's sales of fabrics incorporating the copyrighted design have caused irreparable injury to plaintiff in that plaintiff's market has been greatly reduced thereby, which injury will continue so long as defendants continue to market the copied design.

26. Plaintiff has been damaged by the acts of defendants alleged herein in an amount not as yet known, but believed to be in excess of One Million (\$1,000,000.00) Dollars. The infringing activities of defendants are further and continuously damaging plaintiff in a manner for which plaintiff has no adequate remedy at law.

WHEREFORE, plaintiff demands:

(1) That defendants, their agents, employees and servants be enjoined pendente lite and permanently from infringing the said Copyright No. VA 1-404-041 of plaintiff covering its Pattern No. 23539, in any manner and from publishing, selling, marketing or otherwise disposing of any textiles and garments imprinted with designs copied from plaintiff's said copyrighted design.

(2) That defendants be required to pay to plaintiff damages in the amount of One Million (\$1,000,000.00) Dollars, plus interest, which plaintiff has sustained in consequence of defendants' infringement of said Copyright and said unfair trade practices and unfair competition and to account for:

(a) all gains, profits and advantages derived by defendants in their infringement of plaintiff's Copyright or such damages as to the Court shall appear proper within the provisions of the copyright statutes, and

(b) all gains, profits and advantages derived by defendants by said unfair practices and unfair competition.

(3) That defendants be required to deliver up to be impounded during the pendency of this action, all copies of said reproduction of said works of art in their possession or under their control, and to deliver up for destruction all infringing copies and rollers, screens, plates, molds, and other matter for making such infringing copies.

(4) That defendants pay to plaintiff the costs of this action and reasonable attorneys' fees to be allowed to the plaintiff by the Court.

(5) That plaintiff have such other and further relief as is just.

Dated: New York, New York
December 20, 2007

SCHLACTER & ASSOCIATES
Attorneys for Plaintiff

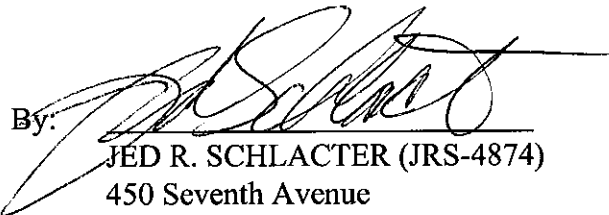
By: 
JED R. SCHLACTER (JRS-4874)
450 Seventh Avenue
New York, NY 10123
(212) 695-2000

EXHIBIT A

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Marybeth Peters

Register of Copyrights, United States of America

FORM VA
For a work of the Visual Arts
UNITED STATES COPYRIGHT OFFICE

VA 1-001-001

EFFECTIVE DATE OF REGISTRATION

6 15 2007

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

TITLE OF THIS WORK

PATTERN NO. 23539

NATURE OF THIS WORK

DESIGN FOR FLOOR

PREVIOUS OR ALTERNATIVE TITLES

PUBLICATION AS A CONTRIBUTION If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. Title of Collective Work

If published in a periodical or serial give: Volume Number

Number

Issue Date

On Page

NAME OF AUTHOR

a MONTGARD S.R.L.

DATES OF BIRTH AND DEATH
Year Born Year Died

Was this contribution to the work a "work made for hire"?
☒ Yes
☐ No

AUTHOR'S NATIONALITY OR DOMICILE

OR ☒ Citizen of ITALY
☐ Domiciled in

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK

Anonymous? ☐ Yes ☒ No
Pseudonymous? ☐ Yes ☒ No

If the answer to either of these questions is "Yes," see detailed instructions.

NATURE OF AUTHORSHIP Check appropriate boxes. See instructions.

- ☐ 3-Dimensional sculpture ☐ Map ☐ Technical drawing
☒ 2-Dimensional artwork ☐ Photograph ☐ Text
☐ Reproduction of work of art ☐ Jewelry design ☐ Architectural work
☐ Design on shiftable material

NAME OF AUTHOR

b

DATES OF BIRTH AND DEATH
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☐ 2-Dimensional artwork ☐ Photograph ☐ Text
☐ Reproduction of work of art ☐ Jewelry design ☐ Architectural work
☐ Design on shiftable material

YEAR IN WHICH CREATION OF THIS WORK WAS COMPLETED

a 2006

DATE AND NATION OF FIRST PUBLICATION OF THIS PARTICULAR WORK

b JUNE 28 2006
USA

COPYRIGHT CLAIMANT(s) Name and address must be given even if the claimant is the same as the author given in space 2.

CAMERON INDUSTRIES, INC.
1375 BROADWAY, NY NY 10018

TRANSFER If the claimant(s) named here in space 4 is (are) different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright.

ASSIGNMENT

ONE DEPOSIT RECEIVED
JUN 15 2007

TWO DEPOSITS RECEIVED

FUNDS RECEIVED

EXAMINED BY

FORM VA

CHECKED BY ☐ CORRESPONDENCE

Yes

FOR
COPYRIGHT
OFFICE
USE
ONLY

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

PREVIOUS REGISTRATION This application is for this work, or for an earlier version of this work, already been made in the Copyright Office?

Yes ☐ No ☒ If your answer is "Yes," why is another registration being sought? (Check appropriate box.) ☐☐ This is the first published edition of a work previously registered in unpublished form.☐ This is the first application obtained by the author as copyright claimant.☐ This is a changed version of the work, as shown by space 5 on this application.If your answer is "Yes," give: Previous Registration Number Year of Registration DERIVATIVE WORK OR COMPILATION Complete both space 6a and 6b for a derivative work; complete only 6b for a compilation.
6a. Identifying Material. Identify any preexisting work or works that this work is based on or incorporates. ☐6b. Material Added to This Work. Give a brief, general statement of the material that has been added to this work and in which copyright is claimed. ☐DEPOSIT ACCOUNT If the application fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account.
Account Number CORRESPONDENCE Give name and address to which correspondence about this application should be sent. Name/Address/Apt/City/State/ZIP ☐JED R. SCHLACTER
SCHLACTER & ASSOCIATES
450 SEVENTH AVE SUITE 1308
NY NY 10123Home office and daytime telephone number 212-675-2400Fax number 212-629-5825

CERTIFICATION I, the undersigned, hereby certify that I am the

check only one ☐☐ author☐ other copyright claimant☐ owner of exclusive right(s)☒ authorized agent ofCAMERON INDUSTRIES INC
Name of author or other copyright claimant, or owner of exclusive right(s) ☐The work identified in this application and that the statements made
in this application are correct to the best of my knowledge.Print or printed name and date ☐ If this application gives a date of publication in space 5, do not sign and submit it before that date.

SOHEL KHAYYAM

Date June 5, 2007Handwritten signature (X) ☐Name ☐Name ☐

SCHLACTER & ASSOCIATES

Name ☐Name/Address/Apt ☐

450 SEVENTH AVE, SUITE 1308

Name ☐City/State/ZIP ☐

New York, NY 10123

- Complete all necessary forms.
- Sign your application in space 8.1. Copyright fee
2. Nonreturnable, 100¢ filing fee
in checks or money order
payable to Register of Copyrights
3. Deposit materialRegister of Copyrights, Library of Congress
101 Independence Ave., S.E.
Washington, D.C. 20540-4200

EXHIBIT B



EXHIBIT C

